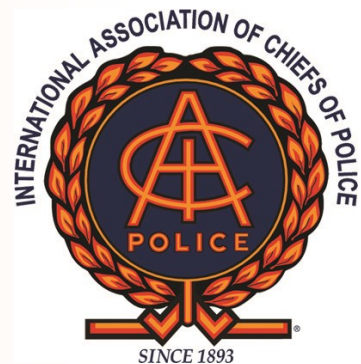


# Law Enforcement's Role in Supporting Victims' Needs through Pretrial Justice Reform

*A briefing paper from IACP's Victim Services Committee*



June 2015



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## Executive Summary

The mission of IACP’s Victim Services Committee (VSC) is to be a catalyst for more effective victim-oriented policing strategies and practices, recognizing that there is a broad spectrum of victims, and that victimization takes many forms. Effective victim-oriented policing should include the full range of systemic initiatives to actively promote successful, coordinated, and culturally competent responses to victims. The VSC achieves its mission through the promotion of a systemic response to victims and by developing policies, training, and legislative initiatives that promote best practices in victim response.

The Victim Services Committee has identified pretrial release/detention as a decision point in the criminal justice system that could be improved through achievable and pragmatic solutions to better meet the needs of victims. While law enforcement leaders are not typically responsible for making pretrial release/detain decisions, they do have an influential voice in calling for justice system reform in the interest of public safety.

The intent of this briefing paper is to raise awareness and prompt informed discussion among law enforcement and other criminal justice leaders about how the pretrial justice system could be improved to be more responsive to victims.

## Critical Needs of Victims: Unmet in the Pretrial Phase of the Justice Process

According to IACP’s “Enhancing Law Enforcement Response to Victims: A 21<sup>st</sup> Century Strategy,” victims have seven critical needs. These needs include:

<b>Safety</b>	Protection from perpetrators and assistance in avoiding re-victimization
<b>Support</b>	Assistance to enable participation in justice system processes and repair of harm
<b>Information</b>	Concise and useful information about justice system processes and victim services
<b>Access</b>	Opportunity to participate in justice system processes and obtain information and services
<b>Continuity</b>	Consistency in approaches and methods across agencies through all stages of the justice process
<b>Voice</b>	Opportunities to speak out on specific case processing issues and larger policy questions
<b>Justice</b>	Receiving the support necessary to heal and seeing that perpetrators are held accountable for their actions

Across the U.S., many police departments have been striving to improve their response to victims, as law enforcement are the first contact point with victims and the criminal justice system. However, law enforcement alone cannot fully address all of the critical needs of victims; a systemic approach is necessary to provide comprehensive support to victims.

There are three challenges to meeting the critical needs of victims during the pretrial release/detain decision: measuring risk, managing risk, and preventing the release of dangerous defendants. These challenges can be met through pragmatic and proven solutions.

### *Measuring Risk*

The first challenge is the way that the risks presented by defendants are measured by the system. In the vast majority of jurisdictions, a money bond, often set through the use of a bond schedule that ties a dollar amount to the most serious of the current charges, is the first opportunity a defendant has to leave jail after arrest.<sup>1</sup> In many jurisdictions, a defendant can pay a money bond (cash, property or surety) and be released from jail before seeing a judge. Therefore, access to money determines if a defendant stays in jail pending trial, not any measure of their risk to reoffend or flee from justice. Allowing a defendant to bond out prior to a judicial hearing has a dramatic impact on victims and community, both in terms of having their voices heard and safety planning. In cases of domestic violence, due to the complex power and control dynamics (e.g., fear, emotional or financial dependence) persistent in those relationships, the victims are often the ones who pay the bond to release the defendant.

### *Managing Risk*

The purpose of a financial bond is primarily to ensure that the defendant returns for their court date, but helping to ensure public safety while the defendant is out pending trial must also be a consideration. Typically, when a defendant posts a financial bond, they are not subject to any form of safety-based monitoring or supervision while they are in the community pending their court appearance.<sup>2</sup>

At present, many states have laws that provide protections and services to victims, which help to meet their critical needs. However, these laws vary widely from state to state and only some provide guidance as it relates to pretrial release/detention decisions. For example, just 14% of jurisdictions provide notice to all victims of a defendant's pretrial release.<sup>3</sup> In a few states, laws require judges to consider victim safety specifically when determining the conditions of pretrial release, assuming the defendant sees a judge prior to posting a financial bond.

Currently, few jurisdictions match the risks and needs presented by defendants with the available evidence-based supervision and monitoring strategies. Unfortunately, too many counties do not invest in evidence-based risk assessment and supervision strategies and the results significantly impact victims. Research shows that when low-risk individuals are over-supervised, the likelihood of recidivating is increased, and when medium-risk individuals are under supervised, the community and victims are put at risk<sup>4</sup>. Therefore, a more thoughtful assessment of risk coupled with a set of supervision and monitoring strategies, crafted to be the most effective and proportional to each defendant's risk, are critical to protecting victims and the community.

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<sup>1</sup> "Rational and Transparent Bail Decision Making: Moving from a Cash-Based to a Risk-Based Process" Pretrial Justice Institute, 2012.

<sup>2</sup> "Rational and Transparent Bail Decision Making: Moving from a Cash-Based to a Risk-Based Process" Pretrial Justice Institute, 2012.

<sup>3</sup> "Pretrial Justice in America: A Survey of County Pretrial Release Policies, Practices, and Outcomes" Pretrial Justice Institute, 2009.

<sup>4</sup> "Exploring the Impact of Supervision on Pretrial Outcomes" Laura and John Arnold Foundation, 2013.

### *Preventing the Release of Dangerous Defendants*

The Supreme Court of the United States has stated that “In our society liberty is the norm, and detention prior to trial is the carefully limited exception.”<sup>5</sup> When a defendant’s risk level warrants such an exception however, most courts have limited options. Ideally, a prosecutor will argue for the preventive detention of the highest-risk defendants based on the findings of a validated risk assessment tool and victim statements. However, only a few states have the necessary statutes authorizing the use of detention without bond, and, in those that do, they are often considered “unworkable.”

Absent preventive detention statutes, the only other option available to judges is to set a very high bond and hope that the defendant is not able to pay the bond, and therefore will remain in jail pending trial<sup>6</sup>. Under those policies, according to research from the Laura and John Arnold Foundation, approximately 50% of high-risk and/or violent arrestees are being released prior to trial.<sup>7</sup> Also, data from the State Court Processing Statistics Project show that only 4% of felony defendants were held without bond while 72% were given an opportunity to be released by posting a financial bond before release<sup>8</sup>. These data are concerning for both victims and the public.

### *Summary*

The current justice system operates in such a way that victim’s needs are often not identified or considered during the pretrial phase. While the legal status of the defendant is ‘innocent until proven guilty,’ the status of the victim is not in question: he/she is a victim of a crime. Victims are impacted by the pretrial decision. Pretrial release practices vary from county to county, state to state, and victims’ experience of this phase of the case is “justice by geography.” It is common for victims not to be notified of the status and/or location of the defendant; if the defendant pays a financial bond to be released from jail pending trial without any conditions of release (e.g., supervision, monitoring, stay-away orders), this can increase fear and impact safety for a victim and does not empower the victim’s voice in the justice process.

### *Meeting Victim’s Needs through an Evidence-Based Pretrial Process*

Some jurisdictions, such as the Commonwealth of Kentucky and the District of Columbia, have recognized the shortcomings of a pretrial system that relies on subjective and unpredictable release/detention decision-making. As a result these jurisdictions have shifted to a system that is objective and evidence-based. There are three key elements to a pretrial justice system that is better able to meet the needs of victims: informed release/detain decisions through the use of an evidence-based, validated risk assessment tool and victim statements; appropriate pretrial release monitoring and supervision; and judicial ability to use preventive detention or no bail for people who pose an unmanageable risk.

### *Informed Release/Detain Decisions*

A validated pretrial risk assessment tool provides objective, empirically-derived information about the likelihood the defendant will return for their court date and will not be rearrested for another crime if they are released pending trial. Typically, a validated risk assessment tool will include questions about

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<sup>5</sup> United States v. Salerno, 481 U.S. 739 (1987). <http://www.law.cornell.edu/supremecourt/text/481/739> (accessed February 4, 2015.)

<sup>6</sup> “Rational and Transparent Bail Decision Making: Moving from a Cash-Based to a Risk-Based Process” Pretrial Justice Institute, 2012.

<sup>7</sup> “Developing a National Model for Pretrial Risk Assessment” Laura and John Arnold Foundation, 2013.

<sup>8</sup> “Pretrial Release of Felony Defendants in State Courts” Bureau of Justice Statistics. November 2007.

current offense, criminal history, employment, residency, drug abuse, and mental health, which have been shown to be accurate predictors of pretrial success or failure in that jurisdiction.<sup>9</sup> If the standard procedure for determining pretrial release is consistently informed by the results of a risk assessment and testimony provided by the victim(s), as opposed to a static bond schedule, better informed decisions can be reached. Institutionalizing this practice also helps meet the need of victims to be heard throughout the justice process.

### *Pretrial Monitoring and Supervision*

Jurisdictions using validated risk assessments must translate the risk score into supervision and monitoring strategies which address the risks and needs presented, and which adhere to research on the risk principle. That is, lower-risk defendants usually need only a court reminder, medium-risk individuals need matched supervision strategies, and the higher-risk individuals need intensive supervision or to be preventively detained<sup>10</sup>. In typical risk distributions, only about 8 percent of defendants score in the high-risk zone, with the rest divided between low and moderate risk levels. Pretrial monitoring and supervision can be provided by a pretrial services agency, law enforcement, or probation and parole, and can include GPS monitoring, curfew, court reminder, case management, treatment/therapy, drug testing, stay away order, travel restrictions and other management strategies<sup>11</sup>. Contrasting with current pretrial release practices, which don't often include monitoring or supervision after a financial bond is paid, victims can feel assured that released defendants are being managed during the period prior to trial. Additionally, violations of release conditions can be reported to law enforcement and the court, contributing to victim's needs for access, voice, and justice.

### *Preventive Detention*

A defendant may rate as high-risk through an assessment or there may be compelling victim testimony and it is determined that no amount of supervision or monitoring will be enough to assure that they either 1) return for their court appearance or 2) do not commit another crime if they are released pending trial. These people pose an unmanageable risk and should be detained prior to their trial with no possibility of release. A judge's ability to use preventive detention for dangerous or high risk defendants must be established under the law. For victims, if a defendant is detained pending trial without the option of bond, it eliminates uncertainty for the victim about whether the defendant is in or out of custody, supporting the victim's critical need for safety<sup>12</sup>.

### *Summary*

Engaging in practices that prioritize the results of validated risk assessments and victim testimony in making release/detain decisions, evidence-based supervision and monitoring of defendants released pretrial, and limited but appropriate use of preventive detention for dangerous people results in a pretrial

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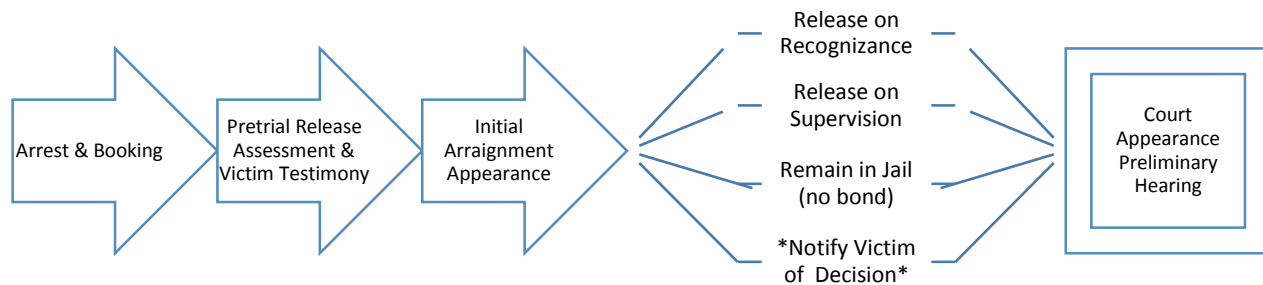
<sup>9</sup> "Risk Assessment: Evidence-based pretrial decision-making" Pretrial Justice Institute, <http://www.pretrial.org/download/risk-assessment/Risk%20Assessment.pdf>

<sup>10</sup> "The Delivery of Pretrial justice in Rural Areas: A Guide for Rural County Officials" National Association of Counties October 2012.

<sup>11</sup> "Using Technology to Enhance Pretrial Services: Current Applications and Future Possibilities" Pretrial justice Institute. December 2012.

<sup>12</sup> "Money as a Criminal Justice Stakeholder: The Judge's Decision to release or Detain a Defendant Pretrial" National Institute of Corrections. September 2014.

system that helps provide consistent support for victims' needs and engagement in the justice system. An example of this system is illustrated below.



## Considerations for Law Enforcement

While law enforcement leaders are not often responsible for the steps of the pretrial system past the point of arrest, they do have an important role in encouraging a system-wide response to the needs of victims. Law enforcement leaders have influence in their local criminal justice systems and can encourage other justice stakeholders to move toward a pretrial system that prioritizes public and victim safety.

Steps for law enforcement leaders to consider to encourage a pretrial system that is victim-sensitive:

- ⇒ Learn more about how pretrial release/detain decisions are made in your jurisdiction
- ⇒ Review the resources at the end of this document for a more in-depth understanding of the topics covered in this briefing paper
- ⇒ Talk with victim advocates about how the current pretrial system operates and seek their support for system reform
- ⇒ Engage in dialogue with other criminal justice stakeholders on the use of implementing a validated risk assessment tool and using victim statements to inform pretrial release/detain decisions and alternatives to money bond for release
- ⇒ Engage in legislative reform, as needed, to enable the use of validated risk assessment tools and preventive detention through due process

Law enforcement leaders have an opportunity and a responsibility to be informed about and engaged in the impact that the pretrial system has on victims and how that system could be enhanced to better support the critical needs of victims.

## Resources

America's Broken Bail System <http://www.publicwelfare.org/americas-broken-bail-system/>

Developing a National Model for Pretrial Risk Assessment  
[http://www.arnoldfoundation.org/sites/default/files/pdf/LJAF-research-summary\\_PSA-Court\\_4\\_1.pdf](http://www.arnoldfoundation.org/sites/default/files/pdf/LJAF-research-summary_PSA-Court_4_1.pdf)

Enhancing Law Enforcement Response to Victims <http://www.responsetovictims.org/>

IACP's Pretrial Justice Reform Initiative <http://www.theiacp.org/pretrial>

Kentucky Pre-Post HB463 First Year Pretrial Report <http://www.pretrial.org/download/law-policy/Kentucky%20Pre%20Post%20HB%20463%20First%20Year%20Pretrial%20Report.pdf>

Pretrial Criminal Justice Research Summary

<http://www.pretrial.org/download/featured/Pretrial%20Criminal%20Justice%20Research%20Brief%20-%20LJAF%202013.pdf>

Pretrial Release: victims' rights and protections <http://www.ncsl.org/research/civil-and-criminal-justice/pretrial-release-victims-rights-and-protections.aspx>

Rational and Transparent Bail Decision Making: Moving from a Cash-Based to a Risk-Based Process <http://www.pretrial.org/download/featured/Rational%20and%20Transparent%20Bail%20Decision%20Making.pdf>

The Criminal Justice System <http://www.victimsofcrime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/the-criminal-justice-system>

Victims' Rights <http://www.victimsofcrime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/victims%27-rights>

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